

WILSON, ELSE, MOSKOWITZ, EDELMAN & DICKER LLP

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MEMO ENDORSED

DEC 26 2007

December 21, 2007

By First Class Mail

Hon. Kenneth M. Karas
United States District Court Judge
United States Courthouse
300 Quarropas Street, Room 533
White Plains, New York 10601-4150

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: _____

Re: Yimy Soto v. The City of New Rochelle; Police Officer Weinerman, Sheild #9792; Police Officer Arias, Sheild #8951; Police Officer Rivera, all Individually and as Police Officers, and Patrick J. Carroll, as Police Commissioner of New Rochelle, and Individually, and The County of Westchester, Docket No.: 07 Civ. 3726 (SCR)
Our File No.: 07367.00061

Dear Judge Karas:

We represent the defendants in the referenced action, with the exception of the County of Westchester which is no longer in the case. By letter dated December 14, 2007, and with the consent of plaintiff's counsel, we requested an extension of the discovery deadline from December 28, 2007 to March 14, 2008. By Order dated December 18, 2007, Your Honor denied the request, but without prejudice to permit an explanation. Accordingly, we respectfully submit the following explanation for the requested extension.

This is a federal civil rights case in which plaintiff alleges excessive force, false arrest, malicious prosecution and related claims in connection with his arrest by members of the New Rochelle Police Department on May 6, 2006. The plaintiff alleges that he suffered physical injuries during the arrest. The complaint was filed on May 11, 2007, and the case was assigned to Judge Robinson. Defendants filed their answer on June 6, 2007. On June 14, 2007, Judge Robinson issued a Civil Case Discovery Plan and Scheduling Order, with the discovery deadline set for December 28, 2007.

The parties have exchanged mandatory discovery, as required by Rule 26(a) of the Federal Rules of Civil Procedure, and have also exchanged document requests and interrogatories. Plaintiff has provided authorizations for the release of his medical records and Defendants have processed those authorizations. What remains to be done, as far as discovery is concerned, are party depositions, and the independent medical examination of plaintiff.

Hon. Kenneth M. Karas

December 21, 2007

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We have made several efforts to schedule the depositions in this case. On August 23, 2007, the Defendants served a notice for plaintiff's deposition scheduled for October 19, 2007. The deposition was adjourned on consent and with the understanding that all parties would be deposed on November 15, 2007. On November 13, 2007, however, plaintiff's attorney advised us in writing that he was assigned to an anticipated one-week criminal trial in the Supreme Court of the State of New York, New York County, starting November 14, 2007, and therefore could not appear for depositions on November 15. On November 14, 2007, we wrote to plaintiff's attorney advising that defendants Arias and Weinerman would be available to be deposed on December 12, 2007. On November 19, 2007, however, we received a letter from plaintiff's counsel stating that he was required to appear in Immigration Court in Buffalo, New York, and so would not be available for the depositions on December 12. After several telephone calls and e-mails went unanswered, we wrote to plaintiff's counsel on December 10, 2007, in an effort to schedule the depositions, and reminding him that a status conference had been scheduled for December 14, 2007. Finally, on December 12, 2007, we received a letter from plaintiff's counsel stating that it was impossible for him to conduct depositions prior to the December 14 court date, and asking that they be scheduled for January 2008. Copies of all of the above correspondence are attached.

On December 14, 2007, counsel for all parties appeared for the status conference. However, the status conference originally scheduled by Judge Robinson did not appear on your calendar. Accordingly, we wrote to Your Honor seeking an adjournment of the discovery deadline.

This case has been pending for only a little more than seven months. We have made diligent efforts to conduct discovery according to the scheduling order and, but for the very busy trial schedule of plaintiff's attorney, we believe that all discovery would have been completed in a timely fashion. Both sides will be prejudiced if not allowed to conduct depositions, and defendants will be further prejudiced if not allowed to conduct an independent medical examination of the plaintiff.

Therefore, we respectfully request that the discovery deadline be extended from December 28, 2007 until March 14, 2008.

Respectfully submitted,

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP


Lalit K. Loomba

Enclosures

Cc (w/encl.):

Emdin & Russell, LLP

286 Madison Avenue, Suite 2002

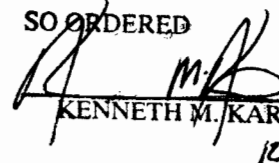
New York, NY 10017

Attn: Royce Russell, Esq.

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP
1843558.1*Granted, but no more extensions*

*In the absence of extraordinary circumstances.
Plaintiff's counsel is to make himself available
for the deposition.*

SO ORDERED


 KENNETH M. KARAS U.S.D.J.
 12/27/07

12126834032

EMDIN & RUSSELL, LLP.

**Attorneys and Counselors at Law
286 Madison Avenue, Suite 2002
New York, N.Y. 10017
Telephone: (212)683-3995
Fax:(212)683-4032**

November 13, 2007

Mtr. Lalita Loombea
Wilson, Elser, Moskowitz,
Edelman & Dicker, LLP.
3 Gannett Drive,
White Plains, New York 10604-3407

Re: Index No: 07 Civ 3762 (SCR)
Your FileNo: 07367.0061

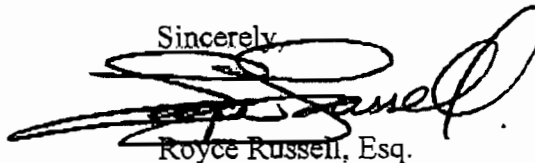
Dear Mr. Loombea:

Please be advised that as of 1:00p.m., today I have been informed by the Supreme Court of New York, Judge Schirer's Court Attorney, that I will be sent out to trial on the case of **People v. Edward Hemphill**, indictment 2840-2007 on November 14, 2007.

My prediction is that this trial will take approximately one week to execute thus my available dates are November 28, 2007 and December 5, 2007 and December 7, 2007.

Please advised as to the next available date for depositions for all parties.

Sincerely,



Royce Russell, Esq.

3 Gannett Drive, White Plains, New York 10604-3407

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November 14, 2007

By Fax: (212) 683-4032

Emdin & Russell, LLP
286 Madison Avenue, Suite 2002
New York, NY 10017
Attn: Royce Russell, Esq.

Re: Yimy Soto v. The City of New Rochelle; Police Officer Weinerman, Sheild
#9792; Police Officer Arias, Sheild #8951; Police Officer Rivera, all
Individually and as Police Officers, and Patrick J. Carroll, as Police
Commissioner of New Rochelle, and Individually, and The County of
Westchester, Docket No.: 07 Civ. 3726 (SCR)
Our File No.: 07367.00061

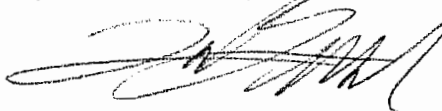
Dear Mr. Russell:

We received your letter concerning your engagement in the criminal trial *People v. Edward Hemphill*, Indictment No. 2840-2007. Officers Arias and Weinerman will be available on December 12, 2007.

Please see attached a supplemental disclosure pursuant to Rule 26(a)(1).

Sincerely yours,

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP



Lalit K. Loomba

Attachment

EMDIN & RUSSELL, LLP.
286 Madison Avenue, Suite 2002
New York, N.Y. 10017
Telephone: 212-683-3995 Fax: 212-683-4032

Via Fax Transmission
914-323-7001

November 19, 2007

Mr. Robert Loomba
3 Gannett Drive
White Plains, N.Y. 10604

Re: Yimy Soto v. The City of New Rochelle

Dear Mr. Loomba:

On December 12, 2007 we agreed to do depositions on the above referenced matter. I have just been informed that I must appear in Immigration Court in Buffalo, N.Y., on December 11, 2007, and it is not sure if this case will continue on till the following day.

Please contact me so we can discuss alternative dates to do depositions. Please be advised that I will not be available December 19, 2007. I apologize for the inconvenience.

Sincerely,



Royce Russell, Esq.

3 Gannett Drive, White Plains, New York 10604-3407

Tel: (914) 323-7000 Fax: (914) 323-7001

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December 10, 2007

By Fax: (212) 683-4032

Emdin & Russell, LLP
286 Madison Avenue, Suite 2002
New York, NY 10017
Attn: Royce Russell, Esq.

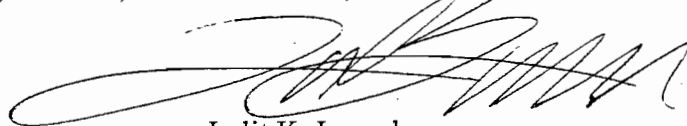
Re: Yimy Soto v. The City of New Rochelle; Police Officer Weinerman, Sheild #9792; Police Officer Arias, Sheild #8951; Police Officer Rivera, all Individually and as Police Officers, and Patrick J. Carroll, as Police Commissioner of New Rochelle, and Individually, and The County of Westchester, Docket No.: 07 Civ. 3726 (SCR)
Our File No.: 07367.00061

Dear Mr. Russell:

I have called and e-mailed you over the last few days in order to confirm depositions in the referenced case. I have not heard back. Please let me know whether you will be producing your client for his deposition. Please note that there is a status conference scheduled in this case for December 14, 2007.

Sincerely yours,

WILSON, ELSE, MOSKOWITZ, EDELMAN & DICKER LLP



Lalit K. Loomba

12/12/2007 16:39 12126834032

EMDIN RUSSELL

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Cover

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286 Madison Avenue, Suite 2002
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Via Fax Transmission
914-323-7001
December 12, 2007

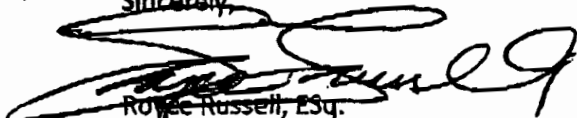
Loomba Lalit, Esq.
3 Gannett Dr
White Plains, NY. 10604

Re: Yimy Soto
File No. 07367.00061
Docket No. 07 Civ 3726 (SCR)

Dear Mr. Lalit:

As you requested I am writing you this letter to inform you that I cannot schedule a deposition on the above referenced matter until after the New Year, due to my calendar schedule. I understand that you would like to hold depositions before the court date of Friday December 14, 2007, since that is not possible please contact my office so that we may schedule a deposition date for January, 2008.

Sincerely,



Roger Russell, Esq.